IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

CRL.A.No. 2071 of 2006()

AGAINST THE ORDER IN CRLP.553/2006
ST.144/2005 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOCHI

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APPELLANT:

M/S. BHAVANA CINEMA,
HOUSE NO.C.15/686, PADAMUGAL, KAKKANAD,
PIN-682 030, REP. BY MANAGING PARTNER
K.M.SIDDIQUE, S/O. MAMADU, PETALS,
HOUSE NO.C.15/686, PADAMUGAL, KAKKANAD.

BY ADV. SRI.K.I.ABDUL RASHEED
SMT.K.N.VIGY

RESPONDENTS:
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1. MR. SIYAD KOKER,
PROPRIETOR, M/S. KOKERS RELEASE,
BAVA'S COLONY, PULLEPADY, KOCHI-682 035.

2. STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.AKBAR K.A. FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl. Appeal No. 2071 of 2006 (A)

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Dated this the 8th day of February, 2007

J U D G M E N T

The complainant in S.T.No.144/2005, on the file of the Judicial Magistrate of the First Class-III, Kochi, is the appellant. The complaint was preferred under Section 138 of the Negotiable Instruments Act, against the first respondent, the accused. It was dismissed for default for the non appearance of the complainant. Hence, on obtaining leave, this appeal is preferred.

2. The learned Magistrate, dismissed the case due to the non appearance of the complainant on three occasions. The counsel for the appellant, though, had not produced the certified copy of the proceedings paper of the court below, submits that the date of posting of the case, 05/05/2006, was noted wrongly by the clerk of the advocate who was appearing before the court below, as 05/08/2006, and, therefore, there was no appearance on that day as well as the next posting date, 15/06/2006. Nevertheless, a representation was made on the

subsequent posting date, 03/08/2006, and the case got adjourned to 01/09/2006. But, because of the traffic block, the counsel could not appear, although, the complainant was ready to adduce evidence. Hence, the impugned order was passed, dismissing the complaint. The counsel prays for an opportunity.

3. The service was complete in respect of the first respondent, the accused. But, there is no appearance. I have disposed of Crl.A.No.2135/2006, today, in respect of the very same appellant. The counsel submits that four cases have been dismissed by the learned Magistrate on the same day, relating to the complainant as well as the respondent accused.

4. In the above facts situation, I set aside the impugned order dated 01/09/2006 and restore S.T.No.144/2005 on the file of Judicial Magistrate of the First Class-III, Kochi. The parties shall appear before the court below on 12/03/2007. The learned Magistrate shall dispose of S.T.No.144/2005, within two months from the date of appearance of the parties.

The appeal is allowed as above.

(J.M.JAMES)
Judge

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